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CENTRAL FAX CENTER  
APR 09 2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant : Stefan Kunz  
Serial No. : 10/575,434  
Filed : April 10, 2006  
TC/A.U. : 1651  
Confirmation No: 1858  
Examiner : S. R. Macauley  
  
Docket No. : 06-226  
Customer No. : 34704

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF  
UNDER 37 C.F.R. § 41.37

Dear Sir:

In response to the Notification of Non-Compliant Appeal Brief mailed on March 13, 2009, having a period for response set to expire on April 13, 2009, Appellant submits herewith a revised section of the Appeal Brief amending the summary of claimed subject matter in connection with independent claim 15 to refer to the specification by page and line number. Appellant contends that the Appeal Brief filed on February 18, 2009 complies with 37 C.F.R. § 41.37.

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No fee is believed to be due by this response. Should the Director determine that a fee is due, he is hereby authorized to charge said fee to Deposit Account No. 02-0184.

Respectfully submitted,

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Date: April 9, 2009

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SUMMARY OF CLAIMED SUBJECT MATTER<sup>1</sup>

The present invention relates to a method for controlling fire blight and a plant protection agent for controlling fire blight.

As set forth in claim 1 on appeal, the method for controlling fire blight comprises providing an acidic environment (see paragraph [0009], specifically lines 5 and 6 thereof) comprising (1) fungal structures selected from the group consisting of yeast cells, fungal spores and mixtures thereof, (see paragraph [0009], specifically lines 3-5 thereof) and (2) at least one of disodium hydrogen phosphate and sodium hydrogen carbonate (see for example, original claim 9) in an amount sufficient to maintain a pH of the acidic environment of between 3 to 6 (see paragraph [0009], specifically line 5) and applying the acidic environment to a plant (see paragraph [0010]).

As set forth in claim 2, the acidic environment is kept within a pH range of 3.6 to 4.0 (see paragraph [0009], specifically line 6). As set forth in claim 4, the method includes the step of adding blastospores of species *Aureobasidium pullulans* (see paragraph [0010], specifically line 4 thereof). As set forth in claim 5, the method includes adding yeast cells of the species *Metschnikowia pulcherrima* (see paragraph [0010], specifically line 5 thereof).

As set forth in claim 6, the method includes adding citric acid as an acidifier (see for example, original claim 8). As set forth in claim 7, the method includes adding whey powder (see for example, original claim 8).

As set forth in claim 8, the method includes adding (1)

<sup>1</sup> The claimed subject matter will be described with reference to the published application, Published Application No. US 2007/0141031 A1.

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blastospores or yeast cells, (2) citric acid and (3) whey powder (see original claim 8).

As set forth in claim 10, the method includes adding spores, conidia and budding yeast cells of filamentous fungi and yeast as fungal structures which are capable of multiplication (see original claim 10).

Independent claim 15 sets forth a plant protection agent for controlling fire blight, wherein 1 kg of product comprises  $2 \times 10^{11}$  to  $1 \times 10^{13}$  blastospores of the species *Aureobasidium pullulans*;  $2 \times 10^{11}$  to  $1 \times 10^{13}$  yeast cells of the species *Metschnikowia pulcherrima*; 100 g to 400 g citric acid; 50 g to 250 g disodium hydrogen phosphate; and 100 g to 500 g whey powder (see claim 15, page 7, lines 9-20 of originally filed application).